FILE COPY

Office - Supreme Court, U. S.
FILED
AUG 10 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 385

ATLANTIC COAST LINE RAILROAD COMPANY,
Appellant,

vs.

M. E. THOMPSON, STATE REVENUE COMMISSIONER OF THE STATE OF GEORGIA

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

STATEMENT AS TO JURISDICTION

CARL H. DAVIS,
PHILIP H. ALSTON,
T. M. CUNNINGHAM,
Counsel for Appellant.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
State statute the validity of which is involved	2
Dates of the judgment and application for appeal	2
Nature of the case	4
Substantial nature of federal question	7
Cases believed to sustain the jurisdiction	8
Appendix-Opinion of the Supreme Court of Georgia	9

Table of Cases Cited

Board of Commissioners v. *Lucas*, 93 U. S. 108	8
Bryant v. *Zimmerman*, 278 U. S. 63	8
Chesapeake & P. T. Co. v. *Manning*, 186 U. S. 238	8
Clark, Receiver v. *Willard*, 292 U. S. 112	8
Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282	7, 8
Hale v. *State Board*, 302 U. S. 101	8
Memphis Gas Co. v. *Beeler*, 315 U. S. 649	8
Moody v. *Moody*, 29 Ga. 519	5
Mower v. *Fletcher*, 114 U. S. 127	8
North Carolina R. R. Co. v. *Story*, 268 U. S. 288	8
Rio Grande Western Ry. Co. v. *Stringham*, 239 U. S. 44	8
Standard Oil Co. v. *Johnson*, 316 U. S. 481	7
Wabash R. R. Co. v. *Tourville*, 179 U. S. 322	8

Statutes Cited

Code of Georgia, Annotated:	
Section 6-501	4
Section 92-8432	2
Section 92-8446	4

Page

Constitution of the United States, Article I, Section 10, Par. 1 ..... 4, 5

Income Tax Act of the State of Georgia of March 31, 1931 (Ex. Sess. Acts 1931, p. 24; Acts 1937, pp. 109, 117; codified in Code of Georgia Ann. Section 92-3102 2

Judicial Code, Section 237(a) (28 U. S. C. A. 344), as amended by the Act of January 31, 1928 (45 Stat. 54, c. 14, Section 1, 28 U. S. C. A. 861(a)) 1, 2, 7

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 385

ATLANTIC COAST LINE RAILROAD COMPANY,
Appellant,

vs.

M. E. THOMPSON, STATE REVENUE COMMISSIONER OF THE STATE OF GEORGIA,
Appellee

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

And now comes Atlantic Coast Line Railroad Company, the above stated appellant, and makes the following statement as to the jurisdiction of the Supreme Court to entertain the appeal in this cause:

1. The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States to entertain this appeal is Judicial Code section 237(a), the pertinent provisions of which are as follows:

"A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be

had . . . where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

The act of January 31, 1928, (c) 14, section 1, 45 Stat. 54, provides: "The writ of error in cases, civil and criminal is abolished. All relief as heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

2. The statute of the State of Georgia, the validity of which is involved, is the income tax act of March 31, 1931, and its amendments, the material portion of which is as follows: "Every domestic corporation and every foreign corporation, shall pay annually an income tax equivalent to five and one-half per cent. of the net income from property owned or from business done in Georgia, as is defined in section 92-3113." (Ex. Sess. Acts 1931, p. 24; Acts 1937, pp. 109, 117; codified in Code of Georgia Ann. section 92-3102.)

3. The date of the judgment sought to be reviewed is June 6, 1946, and the date upon which the application for appeal was presented is July 15th, 1946.

4. J. Eugene Cook, State revenue commissioner of Georgia, assessed Atlantic Coast Line Railroad Company for a deficiency of income taxes under the said income tax act of March 31, 1931, as amended, in respect of the income derived by Atlantic Coast Line Railroad Company from the main line of the Georgia Railroad and the Athens branch. Atlantic Coast Line Railroad Company protested the assessment of the deficiency as allowed by Code section 92-8432 (Code of Georgia Ann.).

In the protest filed by the Atlantic Coast Line Railroad Company to the said assessment, protestant objected to the assessment as follows:

"Your petitioner contends that the income of the Georgia Railroad main line and Athens branch for the years 1941, 1942, and 1943, is tax exempt by virtue of the irrepealable contract in the charter of that railroad granted in 1833, and is not to be used in any manner in preparing the income tax return of your petitioner to the State of Georgia . . . to so use tax exempt income is to tax your petitioner as one of the joint lessees of the Georgia Railroad, on the income received by your petitioner from the operations of the main line and Athens branch of said railroad and imposes a burden of taxation upon said properties of the Georgia Railroad & Banking Company and the stockholders thereof, for a tax upon the income received by a lessee of said Georgia Railroad necessarily impairs the ability of the Georgia Railroad & Banking Company to lease the Georgia Railroad (as it is expressly permitted to do under the charter) and decreases the amount of rent which the Georgia Railroad & Banking Company may receive from said property. The purpose of the State of Georgia in granting said charter to the Georgia Railroad and Banking Company and inserting therein the provisions concerning taxation was to encourage that corporation to build and develop its railroad under the promise that it would receive and retain for itself all of the profits thereof subject only to the burden of the tax provided by its charter. The corporation was to build its road with the promise that its profits from said road would be burdened only by the tax provided in its charter. The charter of the corporation expressly granted to it the right to lease its railroad. Any tax imposed upon the profits received by the lessee neces-

sarily affects the profits that the corporation will receive from its railroad, and thereby imposes upon the corporation the burden of taxation not permitted by its charter. It is a violation of article I, section 10, cl. 1 of the constitution of the United States and of article I, section 3, paragraph 2 of the constitution of the State of Georgia to impose said tax, because the charter of the Georgia Railroad & Banking Company constitutes a contract and the imposition of the proposed tax on your petitioner will be a violation of the obligation of said contract, contrary to the said constitutional provisions. . . . Your petitioner further protests said proposed assessments for the reason that the commissioner declined to recognize petitioner's claims of tax immunity as contained in the charter granted by the State of Georgia to the Georgia Railroad & Banking Company by act approved December 21, 1833; your petitioner having acquired a one-half interest in the lease dated May 7, 1881, between Georgia Railroad & Banking Company and William M. Wadley, and having succeeded to his rights and is thereby vested with all the rights, powers, privileges, and immunities granted by the State of Georgia to the Georgia Railroad & Banking Company by said charter and by said company, in the lease to the said William M. Wadley."

5. The said protest of Atlantic Coast Line Railroad Company was disallowed and thereupon it appealed from the said assessment to the superior court of Chatham County, as allowed by Code section 92-8446 (Ann. Code of Georgia), its principal place of doing business in the State of Georgia being in the said county.

An appeal to the superior court is a *de novo* investigation. Code section 6-501 provides: "An appeal to the superior court is a de novo investigation. It brings up the whole record from the court below, and all competent

evidence shall be admissible on the trial thereof whether adduced on a former trial or not; either party is entitled to be heard on the whole merits of the case." See also, construing said section: *Moody* v. *Moody*, 29 Ga. 519, 520.

Atlantic Coast Line Railroad Company filed an amendment to its appeal on the call of the case, the first paragraph of which amendment is as follows: "Section 15 of the charter of Georgia Railroad and Banking Company, which provides for a tax 'not exceeding one-half per cent per annum on the net proceeds of their investments,' is an irrevocable and inviolable contract of the State of Georgia, and cannot be modified or changed by any subsequent legislative act of the State of Georgia, or any subsequent provision of the constitution of the State of Georgia; and the said income tax act of 1931, as applied by the State revenue commissioner so as to tax Atlantic Coast Line Railroad Company with the income of the main line of the Georgia Railroad from Augusta to Atlanta and the branch to Athens, which it receives as lessee of the Georgia Railroad, is unconstitutional, null and void, and contrary to article I, section X, paragraph I, of the constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts; and it is contrary to article I, section III, paragraph II, of the constitution of the State of Georgia which provides that no law impairing the obligation of contracts shall be passed, and the assessments made by the State revenue commissioner under said income tax act of 1931 are, therefore, null and void."

6. J. Eugene Cook, State revenue commissioner, having resigned, M. E. Thompson was appointed State revenue commissioner in his place, and was duly substituted as the appellee in this case.

7. The case was heard before Judge R. H. Humphrey (of the Middle Circuit) without a jury, who presided in the place of Judge David S. Atkinson (of the eastern circuit), in which Chatham County is located, who disqualified himself. Judge Humphrey decided that section 15 of the charter of the Georgia Railroad and Banking Company was an irrepealable contract with the State of Georgia, and that under the charter the income from the main line and Athens branch could not be taxed to the lessee, the Georgia Railroad and Banking Company having already paid the one-half of one per cent per annum on the net proceeds of their investments as prescribed by the charter, and the court thereupon ordered that the appeal of the Atlantic Coast Line Railroad Company should be sustained and the assessments were adjudged to be null and void.

8. M. E. Thompson, State revenue commissioner of the State of Georgia, thereupon made a motion for new trial, which was duly overruled by the court, and he thereupon sued out a bill of exceptions to the Supreme Court of Georgia. The Supreme Court of Georgia, as appears from a copy of its opinion hereto attached, upheld the validity of the income tax act of March 31, 1931, as applied by M. E. Thompson, State revenue commissioner to tax Atlantic Coast Line Railroad Company, over the contention of the Atlantic Railroad Company (which was pressed before the Supreme Court of Georgia) that said act so construed impaired the obligation of section 15 of the Georgia Railroad Company charter contrary to article 1, section 10, paragraph 1, of the constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

9. The judgment entered by the Supreme Court of Georgia in this cause on June 6, 1946, from which this appeal

is taken is as follows: "This case came before this court upon a writ of error from the superior court of Chatham County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed because the court erred in refusing a new trial. Direction is hereby given that the trial court vacate its former judgment in favor of Atlantic Coast Line Railroad Company and enter a judgment denying the appeal of the said company and rendering judgment in favor of M. E. Thompson, State revenue commissioner, sustaining the tax assessments as made."

10. The constitutional question involved is substantial because if appellant is right, it cannot be taxed under the income tax act of March 31, 1931, on the income received by it as lessee of the main line and Athens branch of the Georgia Railroad, which tax for the years involved in this case (1941, 1942, and 1943) amounts to a large sum of money; nor can it be taxed thereon for subsequent years during the balance of the term of the lease.

11. The following statutes and cases are cited to sustain the jurisdiction of the Supreme Court of the United States to entertain this appeal.

(a) The appeal is sought under section 237(a) of the Judicial Code (28 U. S. C. A. section 344) as amended by act of January 31, 1928 (45 Stat. 54, c. 14, section 1; 28 U. S. C. A., section 861(a)).

(b) On the point that if the income tax act of March 31, 1931, as applied to appellant by appellee is held valid by the Supreme Court of Georgia against the contention of appellant, that said act so applied is repugnant to the constitution of the United States, appeal will lie to the Supreme Court of the United States, see the following cases: *Standard Oil Co.* v. *Johnson*, 316 U. S. 481; *Dahnke-Walker Mill-*

ing Co. v. *Bondurant*, 257 U. S. 282; *Memphis Gas Co.* v. *Beeler*, 315 U. S. 649; *Hale* v. *State Board*, 302 U. S. 101; *Bryant* v. *Zimmerman*, 278 U. S. 63.

(c) The judgment of the Supreme Court of the State of Georgia is final, because direction is given in said judgment to the lower court to enter a judgment denying and dismissing the appeal and sustaining the assessment made by the commissioner. This finally terminates the case and leaves no discretionary act to be done by the lower court. See on this point the following cases: *Mower* v. *Fletcher*, 114 U. S. 127; *Board of Commissioners* v. *Lucas*, 93 U. S. 108; *Wabash R. R. Co.* v. *Tourville*, 179 U. S. 322; *Chesapeake & P. T. Co.* v. *Manning*, 186 U. S. 238; *Rio Grande Western Ry. Co.* v. *Stringham*, 239 U. S. 44; *North Carolina R. R. Co.* v. *Story*, 268 U. S. 288; *Clark, Receiver*, v. *Willard*, 292 U. S. 112.

12. A copy of the decision of the Supreme Court of the State of Georgia in this case is hereto attached.

This 15th day of July, 1946.

CARL H. DAVIS,
PHILIP H. ALSTON,
T. M. CUNNINGHAM,
Attorneys for Atlantic Coast Line Railroad Company.

APPENDIX

No. 15480

SUPREME COURT OF GEORGIA

Decided June 6, 1946.

THOMPSON, State Revenue Commissioner,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

By the Court:

1. Where a perpetual corporate charter granted by the legislature confers tax exemptions upon the corporation, the exemption is irrevocable. Accordingly, article 1, section 3, paragraph 3 of the constitution of 1945 (Ga. L. 1945, p. 8), purporting to revoke such charter provisions, is void and of no effect.

2. Where, as here, such charter provision limits the tax on the "stock" of the corporation to ½ of 1 per cent "on the net proceeds of their investments," it is a property tax and constitutes no bar to the collection by the State under the 1931 income tax law as amended (Ga. L. 1931, Ex. Sess., p. 24) of an income tax from a lessee of the corporation on its net income derived from the use of the corporate property on which the charter thus limits the property tax.

Atlantic Coast Line Railroad Company, in resistance to a tax assessment by the State revenue commissioner for income taxes for which the commissioner claimed that it was liable under the 1931 income tax statute as amended (Ga. L. 1931, Ex. Sess., p. 24) claimed that it was exempt from such tax assessment under an act of 1833 (Ga. L. 1833, p. 256), incorporating Georgia Railroad Company, which later by amendment to its charter became Georgia Railroad and Banking Company; and that the income against which the tax under the assessment is claimed was realized as a lessee in the operation of the railroad. The

assessment was appealed to the superior court and the case was submitted to the judge without the intervention of a jury.

The railroad filed a special plea of *res adjudicata*, alleging that the judgments in the cases of State of Georgia *v.* Georgia Railroad and Banking Co., 54 Ga. 424, and Wright *v.* Georgia Railroad and Banking Co., 216 U. S. 420, were *res adjudicata* in the present case. The State filed a special plea attacking the act of 1833 upon constitutional grounds. In this plea it was contended that section 15 of the act, which provides for the tax exemption of the stock of the corporation, was unconstitutional in so far as it applied to the claim of exemption of Atlantic Coast Line Railroad Company; and that it was in conflict with section 17, article 1, of the constitution of 1798, which declared, "nor shall any law or ordinance pass, containing any matter different from what is expressed in the title thereof." The plea further alleged that sections 13 and 14 of the act of 1835 amending the original charter, in so far as they attempted to convey any income tax exemption granted the original corporation of Georgia Railroad Company to Georgia Railroad and Banking Company, conflicted with the constitutions of 1798, 1877, and 1945, as containing matter foreign to that indicated in the caption of the act. It was further alleged that section 15 of the original charter was in conflict with section 22, article 1, of the constitution of 1798, which declared that the General Assembly shall have power to enact any law it deems necessary and proper for the good of the State which is not repugnant to the constitution. This attack is based upon the contention that the provision under attack is repugnant to the constitution because it is a grant of sovereignty and was not expressed in the title. Other constitutional attacks were set forth in the plea.

There was no conflict in the evidence on the material facts. It was shown that Georgia Railroad and Banking Company, on May 7, 1881, leased the railroad properties to William M. Wadley and his assigns for a term of 99 years, beginning April 1, 1881, for an annual rental of $600,000; and that by successive leases and assignments

Atlantic Coast Line Railroad Company became and is the lessee of a one-half interest in the railroad property. It has, at all times up to the present, made payments to the State of taxes on its stock on the basis provided in section 15 of its charter, by paying as there provided ½ of 1 per cent of net income realized from the operation of the railroad. In making these calculations and payments, the corporation took the net income of Atlantic Coast Line Railroad Company during each year it had operated, and calculated ½ of 1 per cent of such net income and paid that amount to the State. Atlantic Coast Line Railroad Company has at no time paid any property tax on its lease, nor has it paid any income tax on the net income realized from its operation of the railroad. It was stipulated that section 15 of the act of 1833, *supra*, if valid and applicable to this case, applied to the main line of Georgia Railroad and Banking Company from Augusta to Atlanta, Georgia, and to the branch line from Union Point to Athens. It was further stipulated that the State of Georgia had never before demanded that the lessees of the railroad should return the net income received from the operation of the main line and the Athens branch; and that similar assessments have been made against Louisville and Nashville Railroad Company, which owned the other half interest in the lease.

The trial court overruled the State's special plea questioning the constitutionality of section 15 of the original charter, and rendered judgment in favor of the railroad. The State revenue commissioner excepts to a judgment overruling his motion for new trial, and assigns error also on the judgment overruling his special plea raising the constitutional question.

Duckworth, Justice. (After stating the foregoing facts.)

1. There appears in the constitution of 1945 (article 1, section 3, paragraph 3) the following provision: "All exemptions from taxation heretofore granted in corporate charters are declared to be henceforth null and void." There are two specific and inescapable legal reasons why the provision of the new constitution just quoted does not

and can not alter or affect the existing rights of the Atlantic Coast Line Railroad Company involved in this case. The first of these solid legal reasons is that the quoted provision does not purport to be retroactive; and even if it was expressly made retroactive, it would nevertheless be completely ineffective in so far as the fixed and established rights of this party are here concerned. The second reason is that this State is powerless by legislative enactment or constitutional provision to nullify or impair in any respect whatever its existing contractual obligations. If the charter provisions referred to are invalid, there would be no need for this constitutional declaration. If they are valid, then this declaration is empty and without legal effect. Article 1, section 10, constitution of the United States; Wheeler *v.* Board of Trustees, 200 Ga. (37 S. E. 2d, 322). By such charter provisions the State became a party to a contract, and however great the financial losses resulting from such tax limitation may be, such loss is nothing compared to the integrity and the solemn duty of the State to discharge fully any and all contractual obligations which it legally assumed.

2. In the view that we take of this case, we find it unnecessary to pass upon the validity of section 15 of the charter, upon which the railroad relies. If it be conceded that the charter provision referred to is valid, that the legislative branch of the government had the legal power thus to surrender a part of the sovereignty of the State and thereby tie the hands of all future legislatures, in so far as legislating freely upon the question of taxation of this corporation, and if it be conceded that the constitutional inhibition against the inclusion, in the body of an act, of matter different from and foreign to the subject embraced in the caption did not render this act void—we come, after all, to the plain provision of the charter which is dealing with and is confined to the subject of a property tax, unrelated to the question we now have of the liability of the corporation for its share of an income tax under the existing laws of the State. The exact language of the charter upon which the railroad relies is as follows: "The stock of the said company, and its branches shall be exempt from taxation

for and during the term of seven years from and after the completion of the said railroads or any one of them; and atfer that, shall be subject to a tax not exceeding one half per cent per annum on the net proceeds of their investments."

The decisive question is, whether or not this charter provision refers to and embraces income taxes, or is limited strictly to a property tax. It cannot be denied that any and all tax exemptions must be strictly construed, and unless the language clearly grants the exemption, it is the duty of the court to rule in favor of the State and against the corporation. Here we have the very foundation of the exemption or limitation stated at the outset to have reference to "the stock of the said company and its branches." If the rule of construction of exemptions above referred to is to be given any meaning whatever, it compels a construction of this provision that limits it to the stock or property of the corporation. Had it been intended that the corporation as a legal entity should forever be free from any sort or form of taxation except the one-half of one percent as therein provided, it would have been a simple matter to have so provided and thus to have made clear such an intent. In failing to make clear such an intent, it is assumed that the legislature intended that the courts apply the rule of construction and restrict the exemption to the limits there stated, and never extend it by writing in something more. There should be no difficulty in seeing clearly that the reference to income was intended solely as a statement of a basis for the calculation of the property taxes there expressly referred to. The fact that the net income is made this basis, and the tax limited to one-half of one per cent of such income, in no wise renders the provision one for an income tax against the corporation. A number of railroad charters existing at the time or subsequently granted contained similar provisions for taxation, but there existed in this State at that time no general law providing for income taxes. It was almost a century thereafter before the legislature enacted our present income tax statute.

We are not unmindful of certain language of the Federal courts indicating that those courts regarded the tax re-

ferred to in this charter provision as an income tax. See Wright *v.* Georgia Railroad and Banking Co., 216 U. S. 420; Wright *v.* Louisville & Nashville Railroad, 236 U. S. 687; Georgia Railroad and Banking Co. *v.* Wright, 132 Fed. 912. In Wright *v.* Georgia Railroad and Banking Co., supra, at page 431 it is said: "That railroad is the product of the investment of the authorized capital, and is, as such, subject only to a tax based upon its 'net proceeds.' This plan of tax upon net earnings is quite consistent with any other form of taxation, and is absolutely independent of any question as to whether the property thus taxed only upon its profits should have a less or greater value than the capital invested." Again, at page 432, it is said: "If we are right in construing the tax as one upon net income as a substitute for a property tax, the franchise may no more be taxed than any other property appropriate to the operation of the road." It is obvious from the language of the Supreme Court just quoted that the only question then being considered by that court was whether or not the property of the railroad could be further taxed. There was not before the court, and indeed it may well be doubted if the court thought of whether or not the corporation could be subjected to a State income tax under a valid law of the State thereafter enacted. Although that court said that it construed the charter provision to constitute a substitute for a property tax, this does not alter the legal question now involved, for it makes no difference whether the charter provision dealt expressly and exclusively with a property tax or provided that an income tax of one half of one per cent might be collected as a substitute for a property tax. It was after all and nevertheless dealing with the subject of a property tax, and not with the subject of an income tax. We, therefore, hold that section 15 of the charter relates only to a property tax and has no bearing on the question of income taxes. The conduct of the corporation and of this lessee, as well as the State officials, points clearly to the fact that all of them interpreted this provision to relate solely to a property tax. This is shown by the fact that Georgia Railroad and Banking Company has throughout the period of this lease yearly paid taxes to the State. It arrived at the amount of taxes due by taking

one-half of one per cent of the net income, not its net income, but the net income of Atlantic Coast Line Railroad Company earned by the use of this property. If this tax was an income tax, as contended by the railroad, then the earner of that income would be the proper party to pay the tax. The net income used as a basis for the calculation of the amount of taxes was the net income of Atlantic Coast Line Railroad Company, in which Georgia Railroad and Banking Company had no interest whatever. Obviously, Georgia Railroad and Banking Company had no obligation to pay an income tax on income in which it had no interest whatever. It paid the taxes on its property in conformity with the provision of its charter, because it recognized its legal obligation for the payment of property taxes upon its own property, and not because it was due the State an income tax arising from income belonging entirely to this lessee.

Having decided that the charter refers to a property tax on the stock of the corporation, and that only, we move on to the further question of whether or not the charter is a bar to the collection of the income tax here sought, which tax is based upon a law enacted in 1931 as amended, Code, Ann. Supp., § 92-3102, as follows: "Every domestic corporation and every foreign corporation shall pay annually an income tax equivalent to five and one-half per cent of the net income from property owned or from business done in Georgia, as defined in section 92-3113; Provided, that the amount of the tax shall not be less than would be produced by applying a rate of two per cent to a base consisting of the entire net income, as defined in this Title, plus all salaries and other compensation paid to all elected and appointed officers, and to the stockholder owning in excess of five per cent of the issued capital stock of the corporation or a relative per centum of the capital stock of any other corporation owning or holding the capital stock of such corporation, and after deducting from such base $10,000 and the deficit, if any; such tax shall be assessed upon the base provided by this section which will produce the greater tax."

In Mayor &c. of Savannah *v.* Hartridge, 8 Ga. 23(1), this court recorded its definite opinion to the effect that there was a well-defined and marked distinction between a prop-

erty tax and an income tax or capitation tax. It was there stated: "Taxation, in reference to the subject-matter, is divided by writers on political economy, as well as the tax laws of all governments, into three classes—capitation, property, and income; and where one or more is treated of or acted upon, *the other is never intended.*" (Italics ours.) This declaration by the court of last resort of this State in the early years of its existence established the policy of our law as one refusing to mix or confuse the three types of taxes. It was a wise and safe guide then. It remains so today, and while that decision was rendered several years after the enactment of the charter here involved, it must be assumed that the legislature, when enacting this charter, was acquainted with the fact as there recited that, "writers on political economy, as well as the tax laws of all governments," thus divided the forms of taxation and adhered to the rule that, where one or more of the forms of taxation are treated or acted upon, "the other is never intended." It is further said in headnote 3 of the cited case that: "A charter, authorizing a municipal corporation to tax real and personal estate, does not, necessarily, confer the right to tax income." This principle, stated differently to apply to the present case, means that the charter here, limiting to ½ of 1 per cent, of the income tax that may be levied against the stock (personal or real estate), does not necessarily confer an exemption against an income tax. To the same effect, see Waring *v.* Mayor &c. of Savannah, 60 Ga. 93; Featherstone *v.* Norman, 170 Ga. 370 (153 S. E. 58). In Purnell *v.* Page, 133 N. C. 125, 129 (45 S. E. 534), it is said: "The tax levied on income is not a property tax, but is a percentage laid on the amount which a man receives, irrespective of whether he spends it, wastes it, or invests it."

Since the railroad here plants its resistance to the tax sought to be collected squarely upon the charter provision of its lessor, and the contention that to apply the income tax law would offend the contract clause of the Federal constitution, article 1, section 10 (Code, §1-134), which prohibits a State from enacting a law that impairs the obligation of a contract, the decisions of the United States Supreme Court on this question are controlling and must be followed by the Supreme Court of Georgia. Without here

entering upon an extended, and in so far as this case is concerned, useless discussion of the various decisions of that court in cases somewhat similar to the case now before us, we may rest our decision upon the decision of that court in Hale *v.* State Board, 302 U. S. 95. It will be observed that in arriving at the conclusion there the Supreme Court accepted previous decisions of the Supreme Court of Iowa defining different forms of taxation. There the State of Iowa sought to collect an income tax under an income tax statute from the holder of certain county school-district and other public bonds that were issued prior to the enactment of the income tax statute, and at the time of the issuance of the bonds there existed in that State general laws prohibiting taxation of such bonds. Both the Supreme Court of Iowa and the Supreme Court of the United States—while recognizing that the law providing for exemption from taxation amounted to a contract, and the case was decided on the basis of this assumption—held that collection of the income tax did not constitute an impairment of the contract in violation of the Federal constitution. The Supreme Court pointed out that the non-existence of an income tax law in the State at the time the legislature was enacting the law exempting the bonds from taxation showed that the legislature had no intention to include or refer to an income tax when enacting the exemption statute, and that, after all, the legislative intent was the controlling factor in a proper interpretation of the exemption statute. Such reasoning applies with compelling force in the present case. There existed in Georgia at the time this charter exemption was enacted no general law which would subject the corporation to the payment of an income tax. In the exemption clause it was expressly stated that the limitation there provided was upon the taxation of stock of the corporation, identical in this respect with the Iowa exemption law if a substitution of bonds for stock is made. Hence here, as the Supreme Court said with reference to that case, the legislature of Georgia, in enacting this exemption clause, did not intend to include an income tax. Such limitation or exemption was not necessary, because in the absence of the same no income tax, under the law as it then existed, would have been exacted of the corporation. The decisions of this

court above referred to commit this court to a construction of tax laws which excludes a tax not referred to in the specific system of taxation dealt with. This rule of construction, which was applied in the Iowa case above, will be followed and applied by this court. We are impressed by the language employed by the Supreme Court in the above case, at page 109, where it is said: "The court is now concerned with the meaning and effect of particular contracts of exemption to be read narrowly and strictly. There is no room at such time for the freer and broader methods that have been thought to be appropriate in the development of the doctrine of implied restraints." By that plain language the Supreme Court gave definite meaning and the proper effect to the universal rule of construction which requires tax exemption laws to be strictly construed with all doubtful meanings resolved in favor of the taxing authority and against the exemption. Such language evidences a practical and reasoned approach, rather than a theoretical and mechanical one. As a legalistic theory it might be urged that, where property is by law exempted from taxation, the full benefit of such exemption is not realized if the owner is required to pay a tax calculated upon the income he receives from the ownership and use of such property. But a practical construction and fair recognition of the extreme difference in the two methods of taxation expose the utter fallacy of such a theory. In the one case, the property would be subject to the payment of a tax irrespective of who was its owner in the absence of such exemption, while in the other case irrespective of the ownership of the property which constitutes the instrumentality with which an income is realized, and irrespective of the disposition of such income, the party receiving the income is required to pay a percentage thereof as an income tax chargeable against himself as the earner and not against the property. Bearing upon the question here decided and in harmony therewith, see Clyde *v.* Gilchrist, 262 U. S. 94; Mason Co. *v.* Tax Commission, 302 U. S. 186; Adams *v.* Saenger, 303 U. S. 59, 62; Rapid Transit Corp. *v.* New York, 303 U. S. 573; Adams Mfg. Co. *v.* Storen, 304 U. S. 307; Graves *v.* N. Y. ex rel. O'Keefe, 306 U. S. 466; U. S. Trust Co. *v.* Helvering, 307 U. S. 57.

In arriving at our decision, here holding a lessee of the railroad subject, under the income tax statute of the State, to the payment of the tax here claimed, we have not been unmindful of, but have given full consideration to, the previous decisions of this court and the Federal courts. We have not overlooked the fact that the Supreme Court in *Wright* v. *Georgia R. R. & Banking Co.*, 216 U. S. 420, affirmed a judgment of the lower court which enjoined the State officials from collecting or attempting to collect any taxes from Georgia Railroad and Banking Company except ½ of 1 per cent of its net income, as provided in section 15 of its charter. We do not regard that judgment as an obstacle to the collection of the present tax, for the reason that when it was rendered no income tax statute existed in Georgia, and, hence, the Federal court did not and could not have given consideration to the question of whether or not the corporation there, or as in the present case a remote lessee of the property, might be subjected to the payment of an income tax under the law now relied upon, enacted many years subsequently to that judgment. A careful reading of the opinion in that case reveals that, notwithstanding the fact that the court many times used expressions indicating that the charter provision involved referred to an income tax, yet each time the court ultimately asserted that the tax there provided for was either a tax upon the stock or was a tax agreed upon as a substitute for a property tax. It is obvious, therefore, that, whether it was a property tax or a substitute for a property tax, it was not a substitute for an income tax, nor was it intended as a bar to the collection of an income tax under a proper law. The indisputable facts sustain the revenue commissioner's claim. The law under which the income tax assessment was made is a valid law of this State, and there being no legal obstacle to the collection of the tax here claimed, a judgment in favor of the State revenue commissioner was demanded, and the court erred in rendering judgment in favor of Atlantic Coast Line Railroad Company.

Judgment reversed, with direction. Bell, C. J., Jenkins, P. J., Duckworth, Atkinson, and Wyatt, JJ., and Judges Gordon Knox and Carl E. Crow concur. Head and Candler, JJ., disqualified.

(6119)